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| http://www.binghammarketing.com/email/img/blank.gif | **Real Estate Newsletter**  **Spring 2012**  **Good News for Multifamily Property Owners: The Freddie Mac CME Program**  **By Jeffrey S. Scharff and Teresa L. Cella**  The Federal Home Loan Mortgage Corporation (Freddie Mac) launched its Capital Markets Execution (CME) Program as an alternative source of financing for multifamily property owners during the height of the economic crisis. Since its inception in 2008, the Freddie Mac CME Program has originated approximately $25 billion of loans across the country. Like other CMBS loans, CME multifamily loans are pooled together and subsequently securitized and sold and are therefore subject to rating agency requirements. [Read more](https://www.binghammccutchen.com/rs/ct.aspx?ct=24F7681BDFE50AEDC1D089A5D42D911FDABE6F95E0BD7DD67EC5515F5BCEFD29E8410)  **Bad Boy Guarantees — Michigan Decisions are More Bad News for Guarantors**  **By Henry S. Healy**  Loan documents for commercial real estate loans frequently state that, subject to limited exceptions, the borrower will have no personal liability for loan obligations. The lender’s sole recourse is to the collateral for the loan. The loan documents usually contain a number of provisions intended to deter a voluntary bankruptcy and to insulate or “ring-fence” the borrower in order to keep it separate from related entities. These are intended to keep the borrower “bankruptcy remote.” They are also intended to reduce the risk of substantive consolidation with related entities in the event of a bankruptcy. As an exception to the nonrecourse terms, the loan documents include provisions that make the loan full recourse to the borrower if the separateness covenants are violated. [Read more](https://www.binghammccutchen.com/rs/ct.aspx?ct=24F7681BDFE50AEDC1D089A5D42D911FDABE6F95E0BD7DD67EC5515F5BCEFD29E8410)  **Circumventing the Secured Lender's Right to Credit Bid — the Dubitable Nature of "Indubitable Equivalent" Collateral**  **By H. Scott Miller**  A statute uses the word “indubitable,” and some of the most accomplished federal judges in the U.S. can’t agree on what it means. The basis of a new “lawyer” joke? Hardly. This is important fodder for bankruptcy commentators. And nonrecourse real estate lenders — undoubtedly — should pay attention. [Read more](https://www.binghammccutchen.com/rs/ct.aspx?ct=24F7681BDFE50AEDC1D089A5D42D911FDABE6F95E0BD7DD67EC5515F5BCEFD29E8410)  **LLC Managers Beware: You May Have Fiduciary Duties**  **By Marc Anthony Angelone**  On Jan. 27, 2011, the Chancery Court of Delaware ruled that fiduciary duties are implicit in Delaware limited liability company agreements. A simple voting majority, by itself, does not give a limited liability company’s manager free rein to take self-serving actions to the detriment of its minority investors. Unless a limited liability company’s operating agreement contains an express provision waiving or modifying a manager’s duties of loyalty and care to its members, these fiduciary duties are implicit in the agreement. [Read more](https://www.binghammccutchen.com/rs/ct.aspx?ct=24F7681BDFE50AEDC1D089A5D42D911FDABE6F95E0BD7DD67EC5515F5BCEFD29E8410)  **Slander of Title: An Old Remedy Revived**  **By Marvin J. Cine**  We are all familiar with the adage, “If you do not have something nice to say, then do not say anything at all.” Though this maxim is commonly employed to discourage oral or written invectives, whether on the playground or elsewhere, it is also applicable to real estate transactions. Ordinarily, disparaging remarks are classified as defamation — whether libel or slander — since the attacks are personal in nature. Yet, defamation can also affect one’s dominion over property if the statement impugns the condition of the property or the clarity of title. [Read more](https://www.binghammccutchen.com/rs/ct.aspx?ct=24F7681BDFE50AEDC1D089A5D42D911FDABE6F95E0BD7DD67EC5515F5BCEFD29E8410)  [View the full newsletter](https://www.binghammccutchen.com/rs/ct.aspx?ct=24F7681BDFE50AEDC1D089A5D42D911FDABE6F95E0BD7DD67EC5515F5BCEFD29E8410) | http://www.binghammarketing.com/email/img/blank.gif |

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